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SENATE BILL 3139 By
Haynes

HOUSE BILL 3052
By Sands

AN ACT to amend Tennessee Code Annotated, Title 56, Chapters 1 and 3, relative to the qualified investments of domestic life insurance companies.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 56-1-405, is amended by deleting the period at the end of the first sentence and by adding the following phrase:

or any deposits of funds of the company that are deposited for the purpose of meeting the requirements for doing business in another state or commonwealth.

SECTION 2. Tennessee Code Annotated, Sections 56-3-302, 56-3-303 and 56-3-304, are amended by deleting the current language in each section in its entirety and substituting therefor the following new language as indicated below for each respective section:

56-3-302. - As used in §§56-3-302 -56-3-306:

(1) “Acceptable collateral” means:

(A) As to securities lending transactions, and for the purpose of calculating counterparty exposure amount, cash, cash equivalents, letters of credit, direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States, or by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, and as to lending foreign securities, sovereign debt rated NAIC-SVO 1;

(B) As to repurchase transactions and reverse repurchase transactions, cash, cash equivalents, letters of credit, direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States, or by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation;

(2) “Admitted assets” means, unless otherwise specified in this part, assets permitted to be reported as admitted assets on the statutory financial statement of the insurer most recently required to be filed with the commissioner, but:

(A) excluding the assets of separate accounts, the investments of which are not subject to the provisions of this part; and

(B) the amount of the liability recorded on the insurer’s statutory balance sheet for:

(i) the return of acceptable collateral received in a reverse repurchase transaction or a securities lending transaction; and

(ii) cash received in a dollar roll transaction shall be deducted from the insurer’s admitted assets for the purpose of calculating any limitation in this part that is based upon admitted assets;

(3) “Affiliate” means, as to any person, another person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the person;

(4) “Business entity” includes a sole proprietorship, corporation, limited liability company, association, general or limited partnership, joint stock company, joint venture, mutual fund, bank, trust, real estate investment trust, joint tenancy or other similar form of business organization, whether organized for-profit or not-for-profit;

(5) “Cap” means an agreement obligating the seller to make payments to the buyer with each payment based on the amount by which a reference price or level or the

performance or value of one or more underlying interests exceeds a predetermined number, sometimes called the strike rate or strike price;

(6) “Capital and surplus” means the sum of the capital and surplus of the insurer required to be shown on the statutory financial statement of the insurer most recently required to be filed with the commissioner;

(7) “Cash equivalents” means highly rated, highly liquid and readily marketable investments or securities with a remaining term to maturity of one year or less, which includes money market funds as defined in §56-3-303(a)(17). For purposes of this definition, “highly rated” means an investment rated “P-1" by Moody’s Investors Service, Inc., or “A-1" by the Standard and Poor’s Division of the McGraw Hill Companies, Inc. or its equivalent rating by a nationally recognized statistical rating organization recognized by the NAIC-SVO;

(8) “Collar” means an agreement to receive payments as the buyer of an option, cap or floor and to make payments as the seller of a different option, cap or floor;

(9) “Counterparty exposure amount” means:

(A) for an over-the-counter derivative instrument not entered into pursuant to a written master agreement which provides for netting of payments owed by the respective parties:

(i) the market value of the over-the-counter derivative instrument if the liquidation of the derivative instrument would result in a final cash payment to the insurer; or

(ii) zero if the liquidation of the derivative instrument would not result in a final cash payment to the insurer.

(B) for over-the-counter derivative instruments entered into pursuant to a written master agreement which provides for netting of payments owed by the respective parties, and the domiciliary jurisdiction of the counterparty is either

within the United States, or if not within the United States, is within a foreign (not United States) jurisdiction listed in the *Purposes and Procedures Manual of the Securities Valuation Office of the NAIC* or, if it is no longer being published, the successor publication thereto as eligible for netting, the greater of zero or the net sum payable to the insurer in connection with all derivative instruments subject to the written master agreement upon their liquidation in the event of default by the counterparty pursuant to the master agreement (assuming no conditions precedent to the obligations of the counterparty to make such a payment and assuming no set off of amounts payable pursuant to any other instrument or agreement);

(C) for purposes of this definition, market value or the net sum payable, as the case may be, shall be determined at the end of the most recent quarter of the insurer's fiscal year and shall be reduced by the market value of acceptable collateral held by the insurer or a custodian on the insurer's behalf;

(10) "Derivative instrument" means any agreement, option or instrument, or any series or combinations thereof:

(A) to make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a cash settlement in lieu thereof; or

(B) that has a price, performance, value or cash flow based primarily upon the actual or expected price, yield, level, performance, value or cash flow of one or more underlying interests.

Derivative instruments include options, warrants (not attached to another financial instrument purchased by the insurer), caps, floors, collars, swaps, swaptions, forwards, futures and any other agreements, options or instruments substantially similar thereto, or any series or combinations thereof. Derivative instruments do not include

collateralized mortgage obligations, other asset-backed securities, principal-protected structured securities, floating rate securities, or instruments which an insurer is otherwise authorized to invest in or receive under this part other than under §56-3-303(a)(21), and any debt obligations of the insurer;

(11) "Derivative transaction" means a transaction involving the use of one or more derivative instruments. Dollar roll transactions, repurchase transactions, reverse repurchase transactions and securities lending transactions shall not be included as derivative transactions for purposes of §56-3-303(a)(21);

(12) "Dollar roll transaction" means two simultaneous transactions with settlement dates no more than 96 days apart so that in one transaction an insurer sells to a business entity, and in the other transaction the insurer is obligated to purchase from the same business entity, substantially similar securities of the following types:

(A) Mortgage-backed securities issued, assumed or guaranteed by the Government National Mortgage Association, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation or their respective successors; and

(B) Other mortgage-backed securities referred to in §106 of Title I of the Secondary Mortgage Market Enhancement Act of 1984 (15 U.S.C. § 77r-1), as amended;

(13) "Equity interests" include common stock, an equity investment in an investment company (other than a money market mutual fund described in §56-3-303(a)(17)), a beneficial interest in a trust or a real estate investment trust, partnership interests, warrants or other rights to acquire equity interests that are created by the person that owns or would issue the equity to be acquired, and equity interests in any business entity (other than preferred stock or shares as described in §56-3-303(a)(3));

(14) “Fixed charges” includes interest on all obligations and amortization of debt discount and expenses;

(15) “Floor” means an agreement obligating the seller to make payments to the buyer in which each payment is based on the amount by which a predetermined number, sometimes called the floor rate or price, exceeds a reference price, level, performance or value of one or more underlying interests;

(16) “Foreign investment” means an investment in a foreign jurisdiction, or an investment in a person, real estate or asset domiciled in a foreign jurisdiction. An investment shall not be deemed to be foreign if the issuing person, qualified primary credit source or qualified guarantor is a domestic jurisdiction or a person domiciled in a domestic jurisdiction, unless:

(A) The issuing person is a shell business entity; and

(B) The investment is not assumed, accepted, guaranteed or insured or otherwise backed by a domestic jurisdiction or a person, that is not a shell business entity, domiciled in a domestic jurisdiction.

For purposes of this definition:

(i) “Shell business entity” means a business entity having no economic substance, except as a vehicle for owning interests in assets issued, owned or previously owned by a person domiciled in a foreign jurisdiction;

(ii) “Qualified guarantor” means a guarantor against which an insurer has a direct claim for full and timely payment, evidenced by a contractual right for which an enforcement action can be brought in a domestic jurisdiction; and

(iii) “Qualified primary credit source” means the credit source to which an insurer looks for payment as to an investment and against which

an insurer has a direct claim for full and timely payment, evidenced by a contractual right for which an enforcement action can be brought in a domestic jurisdiction;

(17) “Foreign jurisdiction” means (A) a jurisdiction other than a domestic jurisdiction or (B) a commonwealth, territory or possession of the United States;

(18) “Forward” means an agreement (other than a future) to make or take delivery in the future of one or more underlying interests, or effect a cash settlement, based on the actual or expected price, level, performance or value of such underlying interests, but shall not mean or include spot transactions effected within customary settlement periods, when-issued purchases or other similar cash market transactions;

(19) “Future” means an agreement, traded on a futures exchange, to make or take delivery of, or effect a cash settlement based on the actual or expected price, level, performance or value of, one or more underlying interests;

(20) “Futures exchange” means a foreign or domestic exchange, contract market or board of trade on which trading in futures is conducted and, in the U.S., which has been authorized for such trading by the Commodities Futures Trading Commission or any successor thereof;

(21) “Hedging transaction” means a derivative transaction which is entered into and maintained to manage:

(A) the risk of a change in the value, yield, price, cash flow or quantity of assets or liabilities (or a portfolio of assets and/or liabilities) which the insurer has acquired or incurred or anticipates acquiring or incurring; or

(B) the currency exchange rate risk related to assets or liabilities (or a portfolio of assets and/or liabilities) which an insurer has acquired or incurred or anticipates acquiring or incurring;

(22) “Income generation transaction” means a derivative transaction which is entered into to generate income. A derivative transaction which is entered into as a hedging transaction or a replication transaction shall not be considered an income generation transaction;

(23) “Investment practices” means transactions of the types described in subdivisions (a)(10), (a)(15), (a)(18) and (a)(21) of §56-3-303;

(24) “Market value” means the price for the security or derivative instrument obtained from a generally recognized source or the most recent quotation from such a source or, to the extent no generally recognized source exists, the price for the security or derivative instrument as determined pursuant to the terms of the instrument or in good faith by the insurer as can be reasonably demonstrated to the commissioner upon request, plus accrued but unpaid income thereon to the extent not included in the price as of the date;

(25) “NAIC” means the National Association of Insurance Commissioners;

(26) “NAIC-SVO” means the Securities Valuation Office of the National Association of Insurance Commissioners;

(27)(A) “Net earnings available for fixed charges” means net income determined on either a consolidated or an unconsolidated basis after allowance for operating and maintenance expenses, depreciation and depletion, and taxes, other than federal and state income taxes, but excluding extraordinary nonrecurring items of income or expense appearing in the regular financial statements of the issuing, assuming or guaranteeing business entity;

(B) In applying tests of “net earnings available for fixed charges” to an issuing, assuming or guaranteeing business entity or a lessee, whether or not in legal existence during the whole of the test period, which has at or prior to the date of investment by the insurance company acquired the assets of any other

business entity by purchase, merger, consolidation or otherwise substantially as an entirety, net earnings available for fixed charges of such predecessor or constituent business entity for such portion of the test period as preceded acquisition may be included in the net earnings of the issuing, assuming or guaranteeing business entity or the lessee, in accordance with the consolidated earnings statement covering such period. The requirements imposed by §56-3-303(a)(2) and (13) upon the issuing, assuming or guaranteeing business entity of the lessee are deemed to have been met if, at the time the investment is made, a business entity which meets such requirements has guaranteed the indebtedness or has otherwise become obligated to pay amounts which are applicable to the payment of and sufficient to discharge the principal of and interest on the indebtedness in accordance with its terms; provided, that in determining whether such requirements have been met, the pro forma annual interest on such indebtedness is included in the fixed charges of the business entity applicable to the test period in question;

(28) “Net earnings available for fixed charges and dividends” are determined in the same manner as “net earnings available for fixed charges” but after allowance for federal and state income taxes;

(29) “Obligation” means a note, bond, debenture, trust certificate, equipment trust certificate, production payment, negotiable bank certificate of deposit, bankers’ acceptance, asset-backed security, NAIC-SVO credit tenant loan, loan secured by financing a net lease or net leases, and other evidence of indebtedness for the payment of money (or participations, certificates or other evidences of an interest in any of the foregoing), whether constituting a general obligation of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment;

(30) “Option” means an agreement giving the buyer the right to buy or receive (a “call option”), sell or deliver (a “put option”), enter into, extend or terminate or effect a cash settlement based on the actual or expected price, spread, level, performance or value of one or more underlying interests;

(31) “Over-the-counter derivative instrument” means a derivative instrument entered into with a business entity, other than through a securities exchange, futures exchange, or cleared through a qualified clearinghouse;

(32) “Person” means an individual, a business entity, a multilateral development bank or a government or quasi-governmental body, such as a political subdivision or a government sponsored enterprise;

(33) “Potential exposure” means:

(A) as to a futures position, the amount of initial margin required for that position; or

(B) as to swaps, collars and forwards, one-half percent (0.5%) times the notional amount times the square root of the remaining years to maturity;

(34) “Preferred dividend requirements” means dividends at the maximum prescribed rate on all preferred stock of the same class as that being acquired by the insurance company and on all stock ranking as to dividends on a parity therewith or prior thereto, whether or not such dividends are cumulative;

(35) “Qualified clearinghouse” means a clearinghouse subject to the rules of a securities exchange or a futures exchange, which provides clearing services, including acting as a counterparty to each of the parties to a transaction such that the parties no longer have credit risk to each other;

(36) “Replication transaction” means a derivative transaction or combination of derivative transactions effected either separately or in conjunction with cash market investments included in the insurer’s investment portfolio in order to replicate the risks

and returns of another authorized transaction, investment or instrument and/or operate as a substitute for cash market transactions. A derivative transaction entered into by the insurer as a hedging transaction shall not be considered a replication transaction;

(37) “Repurchase transaction” means a transaction in which an insurer purchases securities from a business entity that is obligated to repurchase the purchased securities or equivalent securities from the insurer at a specified price, either within a specified period of time or upon demand;

(38) “Reverse repurchase transaction” means a transaction in which an insurer sells securities to a business entity and is obligated to repurchase the sold securities or equivalent securities from the business entity at a specified price, either within a specified period of time or upon demand;

(39) “Securities exchange” means:

(A) an exchange registered as a national securities exchange or a securities market registered under the Securities Exchange Act of 1934 (15 U.S.C. §78 et seq.), as amended;

(B) Private Offerings Resales and Trading through Automated Linkages (PORTAL); or

(C) a designated offshore securities market as defined in Securities Exchange Commission Regulation S, 17 C.F.R. part 230, as amended.

(40) “Securities lending transaction” means a transaction in which securities are loaned by an insurer to a business entity that is obligated to return the loaned securities or equivalent securities to the insurer, either within a specified period of time or upon demand;

(41) “SVO Rating” means the numerical ranking designation of one (1) through six (6) assigned to securities as determined by the NAIC-SVO;

(42) “State” includes the several states, the District of Columbia, the Commonwealth of Puerto Rico and the possessions of the United States;

(43) “Swap” means an agreement to exchange or to net payments at one or more times based on the actual or expected price, yield, level, performance or value of one or more underlying interests;

(44) “Swaption” means an option to purchase or sell a swap at a given price and time or at a series of prices and times. A swaption does not mean a swap with an embedded option;

(45) “Underlying interest” means the assets, liabilities or other interests, or a combination thereof, underlying a derivative instrument, such as any one or more securities, currencies, rates, indices, commodities or derivative instruments; and

(46) “Warrant” means an instrument that gives the holder the right to purchase or sell the underlying interest at a given price and time or at a series of prices and times outlined in the warrant agreement.

56-3-303. (a) Domestic life insurance companies may, directly or indirectly through an investment subsidiary, invest their assets and engage in investment practices as follows:

(1) In obligations, not in default as to principal or interest, which are valid and legally authorized obligations issued, assumed or guaranteed by the United States, or by any state thereof, or by any county, city, town, village, municipality or district therein, or by any political subdivision thereof, or by any civil division or public instrumentality of one (1) or more of the foregoing, if, by statutory or other legal requirements applicable thereto, such obligations are payable, as to both principal and interest, from taxes levied, or by such law required to be levied, upon all taxable property or all taxable income within the jurisdiction of such governmental unit or from adequate special revenues pledged or otherwise appropriated or by such law required to be provided for the

purpose of such payment, but not including any obligations payable solely out of special assessments on properties benefited by local improvements;

(2) In obligations, or in commercial paper or bankers' acceptances, or similar evidences of indebtedness customarily issued at a discount from principal value, issued, assumed, or guaranteed by any business entity created or existing under the laws of the United States, or any state thereof, which are not in default as to principal or interest; provided, that either:

(A) The net earnings of the issuing, assuming or guaranteeing business entity available for its fixed charges for a period of five (5) fiscal years next preceding the date of acquisition by such insurance company shall have averaged per year not less than one and one-half (1.5) times its average annual fixed charges applicable to such period, if during either of the last two (2) years of such period such net earnings shall have been not less than one and one-half (1.5) times its fixed charges for such year; or

(B) Either the obligation is or the issuing, assuming or guaranteeing business entity's or business entities' long-term obligations are rated one of the four (4) highest grades by any of the nationally recognized statistical rating organizations recognized by the NAIC-SVO or one (1), two (2) or three (3) by the NAIC-SVO;

(3) In preferred stock or shares of any business entity created or existing under the laws of the United States or any state thereof; provided, that:

(A) The aggregate net earnings of the issuing business entity available for its fixed charges and dividends for a period of (3) fiscal years next preceding the date of acquisition is at least equal to one and one-fourth (1.25) times the sum of its aggregate fixed charges, full contingent interest and preferred dividend requirements for the same period or rated one of the four (4) highest grades by

any of the nationally recognized statistical rating organizations recognized by the NAIC-SVO or one (1), two (2) or three (3) by the NAIC-SVO; and

(B) The investments made under the authority of this subdivision (a)(3) shall not at any time cause the insurance company's holdings:

(i) Of the preferred stock or shares of any one (1) business entity to exceed two percent (2%) of the admitted assets of the insurance company;

(ii) Of the preferred stock or shares of all business entities to exceed fifteen percent (15%) of the admitted assets of the insurance company;

(4)(A) In equity interests of any solvent business entity created or existing under the laws of the United States or of any state thereof; provided, that:

(i) If the equity interest is a common stock, such business entity shall have earned, during the period of five (5) fiscal years next preceding the date of acquisition by such insurance company, an aggregate sum available for dividends upon its common stock or shares equal at least to an aggregate sum which would have been sufficient to pay dividends of six percent (6%) per annum upon the par or stated value of all its common stock or shares outstanding during such period;

(ii) If the equity interests are in a real estate company, the provisions of §§ 56-3-305 and 56-3-306 shall apply with respect to such equity interests and to the real property owned by such real estate company, and the amount invested in the equity interests of such real estate company shall be included with the aggregate of all of the insurance company's holdings and investments for the purposes of §56-3-305(b);

(iii) Investments made under the authority of this subdivision (a)(4)(A) shall not at any time cause the insurance company's holdings of equity interests in:

(a) any one (1) business entity to exceed one percent (1%) of the admitted assets of the insurance company; or

(b) all business entities to exceed the larger of:

(1) Ten percent (10%) of the admitted assets of the insurance company; or

(2) Fifty percent (50%) of the amount by which the capital and surplus of the insurance company exceed the minimum capital and surplus required for the kind of insurance it is authorized to transact in this state; and

(iv) For purposes of determining the holdings of such equity interests pursuant to this subdivision (a)(4)(A), the value of such equity interests shall be the value thereof shown on the insurer's statutory financial statement most recently required to be filed with the commissioner;

(B) The commissioner may approve a plan for an insurer to make investments in equity interests of business entities in an aggregate amount not to exceed an additional ten percent (10%) of its admitted assets if the commissioner determines that the plan contains adequate quality and diversification standards.

(C) Investments made and transactions entered into pursuant to subdivision (a)(20)(A) shall be included in determining an insurer's compliance with subdivision (a)(4)(A) and, if the commissioner has approved a plan for the insurer under subdivision (a)(4)(B), subdivision (a)(4)(B) in the aggregate.

(5) Upon security of promissory notes amply secured by pledge of any bonds or other securities in which such companies are authorized to invest their funds;

(6) Upon the security of their own policies; provided, that the loan upon any policy shall not exceed the amount of loan value provided in §56-7-2309;

(7) In the obligations, and/or stock where stated, of the following agencies of the government of the United States, whether or not such obligations are guaranteed by such government:

(A) Commodity credit corporation;

(B) Federal intermediate credit banks;

(C) Federal land banks;

(D) Banks for cooperatives;

(E) Federal home loan banks, and stock of such banks;

(F) Federal national mortgage association, and stock thereof when acquired in connection with sale of mortgage loans to such association; and

(G) Any other similar agency of the government of the United States and of similar financial quality;

(8) In lawfully authorized bonds or other evidences of indebtedness issued or guaranteed by the International Bank for Reconstruction and Development, or the Inter-American Development Bank, the African Development Bank and the Asian Development Bank; provided, that the aggregate amount of the insurance company's investment under this subdivision shall not exceed five percent (5%) of the admitted assets of the insurance company;

(9) In shares in federally insured building and loan and savings and loan institutions; provided, that the aggregate of investments under this subdivision shall not exceed one percent (1%) of the admitted assets of the insurance company;

(10) In other types of investments and transactions, in addition to those authorized by this section or other sections of the code, subject to the approval of the commissioner. An insurer shall not be required to have exhausted its authority to make investments or engage in transactions under subdivision (a)(15) prior to seeking any approval from the commissioner under this subdivision (a)(10). Any investment made or transaction entered into by an insurer pursuant to approval from the commissioner under this subdivision (a)(10) shall not be required to be taken into account in determining compliance with subdivision (a)(15).

(11) Subject to the provisions of the third sentence of this subdivision (a)(11) in loans (or participations therein) secured by first mortgages (or second mortgages so long as the insurer holds the first mortgages that are senior thereto) upon improved, unencumbered real property, or upon leasehold estates in improved real property in the United States, not exceeding, however, seventy-five percent (75%) of the value of such property or leasehold estate, repayable in not more than thirty (30) years. All loans secured by leasehold estates must provide for amortization of principal at least once in each year in amounts sufficient to completely amortize the loan at least twenty-one (21) years prior to expiration of the lease term, inclusive of the term or terms which may be provided by an enforceable option or options of renewal. Real property and leasehold estates shall not be deemed to be encumbered within the meaning of this section by reason of the existence of unpaid assessments and taxes not delinquent, mineral, oil or timber rights, easements or rights-of-way for public highways, private roads, railroads, telegraph, telephone, electric light and power lines, drains, sewers or other similar easements or rights-of-way, liens for service and maintenance of water rights when not delinquent, party wall agreements, building restrictions, or other restrictive covenants or conditions, or leases under which rents or profits are reserved to the owner, if in any event the security for the loan is a first lien (or is a second lien so long as such insurer

also holds the first lien that is senior thereto) upon the real property or leasehold estate and if there is no condition or right of reentry or forfeiture under which, in the case of real property other than leaseholds, the lien can be cut off, subordinated or otherwise disturbed, or under which, in the case of leaseholds, the insurance company is unable to continue the lease in force for the duration of the loan. A loan guaranteed or insured in full by the administrator of veterans' affairs pursuant to the provisions of the Servicemen's Readjustment Act of 1944 (38 U.S.C. §§3701-3725), may be subject to a prior encumbrance insured by the federal housing administrator or commissioner, and the foregoing limitations in respect to value and repayment shall not apply to a loan which is:

(A) Insured by, or for which a commitment to insure has been made by, the federal housing administrator or commissioner pursuant to the provisions of the National Housing Act, as heretofore or hereafter amended;

(B) Guaranteed by the administrator of veterans' affairs pursuant to the provisions of the Servicemen's Readjustment Act of 1944 (38 U.S.C. §§ 3701-3725), as heretofore or hereafter amended, except that, if only a portion of a loan is so guaranteed, such limitation of value shall apply to the portion not so guaranteed; or

(C) Insured by the administrator pursuant to the provisions of the Servicemen's Readjustment Act of 1944 (38 U.S.C. §§3701-3725);

(12) In purchase money mortgages or like securities received by the insurance company upon the sale or exchange of real property acquired pursuant to § 56-3-305;

(13) In obligations of persons organized under the laws of the United States or any state thereof, secured by assignment of lease or leases, or the rentals payable under such leases, of real or personal property, or both, to:

(A) The United States or any state thereof, or any county, city, town, village, municipality or district therein or any political subdivision thereof or any civil division or public instrumentality of one (1) or more of the foregoing; or

(B) One (1) or more persons created or existing under the laws of the United States, or of any state; provided, that:

(i) The fixed rentals assigned shall be sufficient to repay the indebtedness within the unexpired term of the lease, exclusive of the term which may be provided by an enforceable option of renewal;

(ii) No such lessee or guarantor of such lease or leases has defaulted in payment of principal or interest on any of its bonds, notes, debentures, or other evidences of indebtedness during the five (5) fiscal years immediately preceding the date of the investment;

(iii) The net earnings of each lessee or guarantor of such lease under subdivision (a)(13)(B) available for its fixed charges for a period of five (5) fiscal years next preceding the date of acquisition by such insurance company has averaged per year not less than one and one-half (1.5) times its average annual fixed charges applicable to such period and during either of the last two (2) years of such period such net earnings has been not less than one and one-half (1.5) times its fixed charges for such year or is rated one of the four (4) highest grades by any of the nationally recognized statistical rating organizations recognized by the NAIC-SVO or one (1), two (2) or three (3) by the NAIC-SVO; and

(iv) A first lien on the interest of the lessor in the unencumbered property so leased is obtained as additional security for the indebtedness;

Notwithstanding the foregoing, any NAIC-SVO credit tenant loan that meets the requirements of subdivision (a)(2) shall be qualified under subdivision (a)(2);

(14) In the purchase and ownership of vessels, vehicles, or rolling stock used or useful for the transportation of persons, goods, products or commodities, or of machinery or equipment used by manufacturing, processing or financial establishments, or of communications equipment used by radio or television stations, or of store fixtures used by retail establishments, which transportation equipment, or machinery or equipment, or communications equipment or store fixtures are or will become subject to contracts for the sale or use thereof under which contractual payments are to be made which may reasonably be expected to return the principal of, and provide earnings on, the investment within the anticipated useful life of the property, such anticipated useful life to be not less than five (5) years. The aggregate of such company's investments under this subdivision shall not exceed three percent (3%) of such company's admitted assets;

(15) In loans, investments or transactions in addition to those authorized under other subdivisions of this subsection or under other sections of this code (notwithstanding any limitations or prohibitions contained in §56-3-305(a)(5) which might otherwise be applicable); *provided*, that for the purposes of subdivision (a)(11) and this subdivision, that the portion of a loan (or participation therein) secured by a mortgage upon real property which does not exceed seventy-five percent (75%) of the value of the property shall be deemed to be a permitted investment under subdivision (a)(11) and the remainder of the loan (or participation therein) may be deemed to be made under this subdivision; *and provided further*, that for the purposes of §56-3-305(a)(5)(B), that the portion of an investment in a single piece or adjoining pieces of real property acquired or held under the authority of §56-3-305 (a)(5) which does not exceed two percent (2%) of such company's admitted assets shall be deemed to be a permitted investment under subdivision (a)(5), and the remainder of the investment shall be deemed to be made under this subdivision; and provided further that if any investments

made or transactions entered into under any other subdivision of this section or §56-3-304 exceed the limits specified therein, then the excess portion of such investment or transaction shall be an investment or transaction under this subdivision. Any loan, investment or transaction originally made under this subdivision which would subsequently, if it were then being made, qualify as an authorized investment or transaction under another subdivision of this subsection or under another section of this code shall thenceforth be deemed to be an authorized investment or transaction under such other subdivision or section. The aggregate of such company's loans, investments and transactions under this subdivision shall not exceed the lesser of:

(A) Ten percent (10%) of the company's admitted assets; or

(B) The amount by which the capital and surplus of the company exceed the minimum capital and surplus required to form a new company to do the kind or kinds of insurance business the company is authorized to transact in this state; provided, that the limitations established by subdivisions (a)(15)(A) and (B) in no event shall be less than five percent (5%) of the admitted assets of the company;

(16) In investment pools that:

(A) Invest only in:

(i) obligations that an insurer may acquire under this section or §56-3-304 that:

(a) Are rated one of the four (4) highest grades by any of the nationally recognized statistical rating organizations recognized by the NAIC-SVO or one (1) or two (2) by the NAIC-SVO and have:

(1) a remaining term to maturity of three hundred ninety-seven (397) days or less or a put that entitles the holder to receive the principal amount of the obligation

which put may be exercised through maturity at specified intervals not exceeding three hundred ninety-seven (397) days; or

(2) a remaining term to maturity of three (3) years or less and a floating interest rate that resets no less frequently than quarterly on the basis of a current short-term index (federal funds, prime rate, treasury bills, London InterBank Offered Rate ("LIBOR") or commercial paper) and is subject to no maximum limit, if the obligations do not have an interest rate that varies inversely to market interest rate changes;

(ii) securities lending, repurchase and reverse repurchase transactions that meet the requirements of subdivision (a)(18); and

(iii) money market mutual funds as authorized in subdivision (a)(17); provided that this short-term investment pool shall not acquire investments in any one business entity that exceed ten percent (10%) of the total assets of the investment pool;

(B) Invest only in investments which an insurer may acquire under this section or §56-3-304, if the insurer's proportionate interest in the amount invested in these investments does not exceed the applicable limits of this section and §56-3-304, and the aggregate amount of all investments in such other investment pools may not exceed twenty-five percent (25%) of the insurer's admitted assets;

(C) An insurer shall not acquire an investment in an investment pool under this subdivision if after giving effect to the investment, the aggregate

amount of investments in all investment pools then held by the insurer would exceed thirty-five percent (35%) of its admitted assets;

(D) For an investment in an investment pool to be qualified under this subdivision, the investment pool shall not:

(i) acquire securities issued, assumed, guaranteed or insured by the insurer or an affiliate of the insurer; or

(ii) borrow or incur any indebtedness for borrowed money, except for securities lending and reverse repurchase transactions;

(E) For an investment pool to be qualified under this subdivision:

(i) the manager of the investment pool shall:

(a) be organized under the laws of the United States or a state thereof or the District of Columbia and designated as the pool manager in a pooling agreement;

(b) be the insurer, an affiliated insurer, a business entity affiliated with the insurer, a custodian bank, a business entity registered under the Investment Advisors Act of 1940 (15 U.S.C. §§80a-1 et seq.), as amended or any similar, applicable state statute, or, in the case of a reciprocal insurer or interinsurance exchange, its attorney-in-fact, or in the case of a United States branch of an alien insurer, its United States manager or affiliates or subsidiaries of its United States manager;

(ii) the pool manager or an entity designated by the pool manager of the type set forth in (E)(i)(b) shall maintain detailed accounting records setting forth:

(a) the cash receipts and disbursements reflecting each participant's proportionate investment in the investment pool;

(b) a complete description of all underlying assets of the investment pool (including amount, interest rate, maturity date (if any) and other appropriate designations); and

(c) other records which, on a daily basis, allow third parties to verify each participant's investments in the investment pool;

(iii) the assets of the investment pool shall be held in one or more accounts, in the name or on behalf of the investment pool, either under a custody agreement or trust agreement with a custodian bank or at the principal office of the pool manager. The applicable agreement shall:

(a) state and recognize the claims and rights of each participant;

(b) acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to the aggregate amount of its investments in the investment pool; and

(c) contain an agreement that the underlying assets of the investment pool shall not be commingled with the general assets of the custodian bank or any other person;

(F) The pooling agreement for each investment pool shall be in writing and shall provide that:

(i) the insurer, its subsidiaries, affiliates or any pension or profit sharing plan of the insurer, its subsidiaries and affiliates or, in the case of a United States branch of an alien insurer, affiliates or subsidiaries of its United States manager, and any unaffiliated insurer shall, at all times, hold one hundred percent (100%) of the interests in the investment pool;

(ii) the underlying assets of the investment pool shall not be commingled with the general assets of the pool manager or any other person;

(iii) in proportion to the aggregate amount of each pool participant's interest in the investment pool:

(a) each participant owns an undivided interest in the underlying assets of the investment pool; and

(b) the underlying assets of the investment pool are held solely for the benefit of each participant;

(iv) a participant, or in the event of the participant's insolvency, bankruptcy, or receivership, its trustee, receiver, conservator or other successor-in-interest, may withdraw all or any portion of its investment from the investment pool under the terms of the pooling agreement;

(v) withdrawals may be made on demand without penalty or other assessment on any business day, but settlement of funds shall occur within a reasonable and customary period thereafter provided that in the case of publicly traded securities, settlement shall not exceed five (5) business days, and in the case of all other securities and investments, settlement shall not exceed ten (10) business days. Distributions under this paragraph shall be calculated in each case net of all then applicable fees and expenses of the investment pool. The pooling agreement shall provide that the pool manager shall distribute to a participant, at the discretion of the pool manager:

(a) in cash, the then fair market value of the participant's pro rata share of each underlying asset of the investment pool;

(b) in kind, a pro rata share of each underlying asset; or

(c) in a combination of cash and in-kind distributions, a pro rata share in each underlying asset; and

(vi) the pool manager shall make the records of the investment pool available for inspection by the commissioner; and

(G) An investment in an investment pool shall not be deemed to be an investment under §56-3-303(b). The formation of an investment pool shall be subject to the reporting requirements of §56-11-201 et seq., but investments in and withdrawals and distributions from an investment pool shall not be subject to such reporting requirements.

(17)

(1) In money market mutual funds as defined by 17 CFR 270.2a-7 under the Investment Company Act of 1940 (15 U.S.C. §§80a-1 et seq.) that may be either of the following:

(A) Government money market mutual fund which is a money market mutual fund that:

(i) invests only in obligations issued, guaranteed or insured by the federal government of the United States or collateralized repurchase agreements composed of these obligations; and

(ii) qualifies for investment without a reserve under the *Purposes and Procedures Manual of the Securities Valuation Office of the NAIC* or, if it is no longer being published, the successor publication thereto; or

(B) Class one money market mutual fund which is a money market mutual fund that qualifies for investment using the bond class one reserve factor under the *Purposes and Procedures Manual of the*

Securities Valuation Office of the NAIC or, if it is no longer being published, the successor publication thereto.

(2) For purposes of complying with this subdivision, money market funds qualifying for listing within these categories must conform to the *Purposes and Procedures Manual of the Securities Valuation Office of the NAIC* or, if it is no longer being published, the successor publication thereto;

(18) In securities lending transactions (either directly, or through a custodian bank, or through an agent approved by the commissioner), repurchase transactions, reverse repurchase transactions and dollar roll transactions, subject to the following conditions:

(A) The insurer shall enter into a written agreement for all transactions that shall require each transaction, except dollar roll transactions, to terminate no more than one (1) year from its inception.

(B) Cash received in a transaction under this subdivision (a)(18) shall be invested in accordance with this §56-3-303(a) or §56-3-304 and in a manner that recognizes the liquidity needs of the transaction or used by the insurer for its general corporate purposes. For so long as the transaction remains outstanding, the insurer, its agent or custodian shall maintain, as to acceptable collateral received in a transaction under this subsection, either physically or through the book entry systems of the Federal Reserve, Depository Trust Company, Participants Trust Company or other securities depositories approved by the commissioner:

(i) Possession of the acceptable collateral;

(ii) A perfected security interest in the acceptable collateral; or

(iii) In the case of a jurisdiction outside of the United States, title to, or rights of a secured creditor to, the acceptable collateral; and

(C) The limitations of subdivision (a)(19) shall not apply to the business entity counterparty exposure created by transactions under this subdivision (a)(18). An insurer shall not enter into a transaction under this subdivision (a)(18) if, as a result of and after giving effect to the transaction:

(i) The aggregate amount of securities then loaned, sold to, or purchased from, any one business entity counterparty under this subdivision (a)(18) would exceed five percent (5%) of its admitted assets. In calculating the amount sold to or purchased from a business entity counterparty under repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement; or

(ii) The aggregate amount of all securities then loaned, sold to or purchased from all business entities under this subdivision (a)(18) would exceed forty percent (40%) of its admitted assets.

(D) The amount of collateral required for securities lending, repurchase and reverse repurchase transactions is the amount required pursuant to the provisions of the *Purposes and Procedures Manual of the Securities Valuation Office of the NAIC* or, if it is no longer being published, the successor publication thereto.

(19) Except as otherwise authorized by subdivisions (a)(4)(B), (a)(10), (a)(15), (a)(16)(A), (a)(17), (a)(18), (a)(22) and (a)(24) an insurer may under this part and §56-3-304 acquire obligations of, preferred stock or an equity interest in or incur counterparty exposure amounts to any one business entity, or as to asset-backed securities, secured by or evidencing an interest in a single asset or pool of assets, but not to exceed three percent (3%) of the insurer's admitted assets and provided that investments and transactions that are subject to the provisions of subdivisions (a)(3)(B)(i), (a)(4)(A)(iii)(a)

and (a)(20)(B) shall be taken into account in determining compliance with this subdivision (a)(19);

(20) Except as otherwise authorized by subdivisions (a)(10), (a)(15), (a)(18), (a)(22) and (a)(24), an insurer shall not under this part or §56-3-304 acquire an obligation of, or preferred stock or an equity interest in or incur a counterparty exposure amount to any person, or as to asset-backed securities, secured by or evidencing an interest in a single asset or pool of assets, if after giving effect to such investment or transaction:

(A) the aggregate amount of such obligations, preferred stock, equity interests and counterparty exposure amounts then held by the insurer that are rated NAIC-SVO 4 or an equivalent rating by any of the nationally recognized statistical rating organizations recognized by the NAIC-SVO would exceed five percent (5%) of its admitted assets; and

(B) investments made and transactions entered into under the authority of this subdivision (a)(20) shall not at any time cause:

(i) the insurance company's holdings of obligations of, preferred stock or equity interests in any one business entity;

(ii) the insurance company's holdings of asset-backed securities secured by or evidencing an interest in a single asset or pool of assets; and

(iii) the insurance company's aggregate counterparty exposure amounts with respect to any one business entity; to exceed one percent (1%) of the insurance company's admitted assets;

(21) In hedging transactions, income generation transactions and replication transactions as follows:

(A) Prior to entering into any derivative transaction, the board of directors of the insurer shall approve a derivative instruments use plan that:

(i) describes investment objectives and risk constraints, such as counterparty exposure amounts;

(ii) defines permissible transactions including identification of the risks that may be hedged, the assets or liabilities that may be replicated and permissible types of income generation transactions; and

(iii) requires compliance with internal control procedures;

(B) The insurer shall establish written internal control procedures that provide for:

(i) a quarterly report to the board of directors that reviews:

(a) all derivative transactions entered into, outstanding or closed out;

(b) the results and effectiveness of the derivative instruments program; and

(c) the credit risk exposure to each counterparty for over-the-counter derivative transactions based upon the counterparty exposure amount;

(ii) a system for determining whether hedging, income generation and/or replication strategies utilized have been effective;

(iii) a system of regular reports (not less frequently than monthly) to management including:

(a) a description of all derivative transactions entered into, outstanding or closed out during the period since the last report;

(b) the purpose of each outstanding derivative transaction;

(c) a performance review of the derivative instruments program; and

(d) the counterparty exposure amounts for over-the-counter derivative transactions;

(iv) written authorizations that identify the responsibilities and limitations of authority of persons authorized to effect and maintain derivative transactions;

(v) documentation appropriate for each transaction including:

(a) the purpose of the transaction;

(b) the assets or liabilities to which the transaction relates;

(c) the specific derivative instrument used in the transaction;

(d) for over-the-counter derivative instrument transactions, the name of the counterparty and the counterparty exposure amount; and

(e) for exchange-traded derivative instruments, the name of the exchange and the name of the firm that handled the transaction;

(C) Whenever the derivative transactions entered into under this subdivision (a)(20) are not in compliance with this subdivision (a)(20) or, if continued, may now or subsequently create a hazardous financial condition of the insurer which affects its policyholders, creditors or the general public, the commissioner may, after notice and an opportunity for a hearing, order the insurer to take such action as may be reasonably necessary to rectify such non-compliance or such hazardous financial condition, or prevent an impending hazardous financial condition from occurring;

(D) An insurer shall include all counterparty exposure amounts in determining compliance with the limitations of subdivisions (a)(19) and (a)(20);

(E)

(i) Prior to entering into hedging transactions, an insurer must obtain the commissioner's approval of the insurer's plan regarding the use of hedging transactions, provided, however, that an insurer that has obtained the commissioner's approval to enter into hedging transactions prior to July 1, 1998 shall not be required to obtain the commissioner's approval of such a plan. Subject to the immediately preceding sentence, an insurer may enter into hedging transactions under this subdivision (a)(21)(E), if as a result of and after giving effect to each such transaction:

(a) the aggregate statutory financial statement value of all outstanding options (other than collars), caps, floors, swaptions and warrants (not attached to another financial instrument purchased by the insurer) pursuant to this subdivision (a)(21)(E) does not exceed seven and one-half percent (7.5%) of its admitted assets;

(b) the aggregate statutory financial statement value of all outstanding options (other than collars), swaptions, warrants, caps and floors written by the insurer pursuant to this subdivision (a)(21)(E) does not exceed three percent (3%) of its admitted assets; and

(c) the aggregate potential exposure of all outstanding collars, swaps, forwards and futures entered into or acquired by the insurer pursuant to this subdivision (a)(21)(E) does not exceed six and one-half percent (6.5%) of its admitted assets;

(ii) With respect to hedging transactions, an insurer shall be able to demonstrate to the commissioner, upon request, the intended hedging

characteristics and effectiveness of the hedging transaction or combination of hedging transactions through cash flow testing, duration analysis or other appropriate analysis;

(F) Subject to the commissioner's prior approval of the insurer's plan regarding use of income generation transactions, an insurer may enter into an income generation transaction if:

(i) as a result of and after giving effect to the transaction, the aggregate statutory financial statement value of admitted assets that are then subject to call or that generate the cash flows for payments required to be made by the insurer under caps and floors sold by the insurer and then outstanding under this subdivision (a)(21)(F), plus the statutory financial statement value of admitted assets underlying derivative instruments then subject to calls sold by the insurer and outstanding under this subdivision (a)(21)(F), plus the purchase price of assets subject to puts then outstanding under this subdivision (a)(21)(F) does not exceed ten percent (10%) of its admitted assets; and

(ii) the transaction is one of the following types and meets the other requirements specified below that are applicable to such type of transaction(s):

(a) sales of call options on assets, provided that the insurer holds or has a currently exercisable right to acquire the underlying assets during the entire period that the option is outstanding;

(b) sales of put options on assets, provided that the insurer holds sufficient cash, cash equivalents or interests in a short-term investment pool to purchase the underlying assets upon exercise during the entire period that the option is outstanding, and has the

ability to hold the underlying assets in its portfolio. If the total market value of all put options sold by the insurer exceeds two percent (2%) of the insurer's admitted assets, the insurer shall set aside pursuant to a custodial or escrow agreement cash or cash equivalents having a market value equal to the amount of its put option obligations in excess of two percent (2%) of the insurer's admitted assets during the entire period the option is outstanding;

(c) sales of call options on derivative instruments (including swaptions), provided that the insurer holds or has a currently exercisable right to acquire assets generating the cash flow to make any payments for which the insurer is liable pursuant to the underlying derivative instruments during the entire period that the call options are outstanding and has the ability to enter into the underlying derivative transactions for its portfolio; and

(d) sales of caps and floors, provided that the insurer holds or has a currently exercisable right to acquire assets generating the cash flow to make any payments for which the insurer is liable pursuant to the caps and floors during the entire period that the caps and floors are outstanding;

(G) Subject to the commissioner's prior approval of the insurer's plan regarding use of replication transactions, an insurer may enter into replication transactions, provided that:

(i) the insurer would otherwise be authorized under this part to invest its funds in the asset being replicated; and

(ii) the asset being replicated is subject to all the provisions and limitations on the making thereof specified in this part with respect to

investments by the insurer as if the transaction constituted a direct investment by the insurer in the replicated asset;

(H) An insurer may purchase or sell one or more derivative instruments to offset, in whole or in part, any derivative instrument previously purchased or sold, as the case may be, without regard to the quantitative limitations of this subsection, provided that such offsetting transaction utilizes the same type of derivative instrument as the derivative instrument being offset; and

(I) Each derivative instrument shall be:

(i) traded on a securities exchange;

(ii) entered into with, or guaranteed by, a person;

(iii) issued or written by or entered into with the issuer of the underlying interest on which the derivative instrument is based; or

(iv) in the case of futures, traded through a broker which is registered as a futures commission merchant under the Commodity Exchange Act or which has received exemptive relief from such registration under rule 30.10 promulgated under the Commodity Exchange Act;

(22)

(A) No provision of this part prohibits the acquisition by an insurer of additional obligations, securities, or other assets if received as a dividend or as a distribution of assets, nor does this part apply to securities, obligations, or other assets accepted incident to the workout, adjustment, restructuring or similar realization of any kind of investment or transaction when deemed by the insurer's board of directors or by a committee appointed by the board of directors to be in the best interests of the insurer, if the investment or transaction had previously been authorized, nor does this part apply to assets acquired pursuant to a lawful

agreement of bulk reinsurance if such assets constituted legal and authorized investments for the ceding company. No obligation, security or other asset acquired as authorized by this subdivision (a)(22) need be qualified under any other subdivision of this section or section of this code, provided, however, that all assets acquired pursuant to this subdivision (a)(22) shall be subject to the applicable accounting and valuation requirements that are contained in this code.

(B) Subject to the provisions of subdivision (a)(22)(C), if a domestic life insurance company, pursuant to a merger or consolidation, acquires an investment or transaction that was an authorized investment or transaction of the company that was merged or consolidated with such domestic life insurance company but does not qualify as an authorized investment or transaction under this part at the time such merger or consolidation occurs (regardless of whether or not such investment or transaction would be authorized under subdivision (a)(15)), then such investment or transaction shall be an authorized investment or transaction under this subdivision (a)(22)(B) (and shall not be required to be applied toward the limitations contained in subdivision (a)(15)) for a period of five (5) years after the date on which such merger or consolidation occurs, after which period it shall no longer be an authorized investment or transaction under this subdivision (a)(22)(B), unless within such five (5) year period:

(i) such investment or transaction qualifies as an authorized investment or transaction under another subdivision of this subsection or another section of this code, including without limitation, subdivision (a)(15) if such domestic life insurance company so elects; or

(ii) the commissioner authorizes such investment or transaction in the plan of merger or consolidation approved by the commissioner; or

(iii) the commissioner, upon request of the insurer, authorizes an extension of such five (5) year time period; or

(iv) the commissioner approves such investment or transaction pursuant to this subdivision (a)(22)(B).

The aggregate amount of a domestic life insurance company's investments and transactions under this subdivision (a)(22)(B), excluding investments and transactions authorized under any of subparagraphs (i), (ii) and (iv) of this subdivision (a)(22)(B), shall not exceed twenty-five percent (25%) of such domestic life insurance company's capital and surplus after giving effect to such merger or consolidation.

(C) If a domestic life insurance company, pursuant to a merger or consolidation, acquires a mortgage loan (or participation therein) that would have been authorized under subdivision (a)(11) (and under subdivision (a)(15) as to the portion thereof, if any, that exceeded seventy-five percent (75%) of the value of the property) at the time the company that was merged or consolidated with such domestic life insurance company invested in such mortgage loan (or participation therein), then such mortgage loan (or participation therein) shall be authorized under subdivision (a)(11) (and under subdivision (a)(15) as to the portion thereof, if any, that exceeded seventy-five percent (75%) of the value of the property).

(D) The commissioner shall have full discretion in selecting a method for calculating values of investments and transactions that an insurer acquires through a merger or consolidation, *provided* that such method is consistent with any applicable provisions of this code and any applicable valuation method that the NAIC is currently using at such time with respect to investments and

transactions; if there is a conflict between such a provision of this code and such an NAIC valuation method, such provision of this code shall control.

(23) The qualification or disqualification of an investment under one subdivision of this section or section of this code does not prevent its qualification in whole or in part under another subsection or section of this code, and an investment authorized by more than one subdivision or section of this code may be held under whichever authorizing subdivision or section of this code the insurer elects. An investment or transaction qualified under any subdivision or section of this code at the time it was acquired or entered into by the insurer shall continue to be qualified under that subdivision or section of this code. An investment, in whole or in part, may be transferred from time to time, at the election of the insurer, to the authority of any subdivision or section of this code under which it then qualifies, whether or not it originally qualified thereunder.

(24) Notwithstanding the provisions of the other subdivisions of this section and §56-3-304, an insurer may acquire an investment in or enter into a transaction with a business entity in which the insurer already holds one or more investments or with which the insurer has entered into one or more transactions if the investment is acquired or the transaction is entered into in order to protect an investment or transaction previously made in or with that business entity, but the aggregate amount of investments and transactions so acquired and entered into may not exceed five percent (5%) of the insurer's capital and surplus; and

(25) The percentage authorizations and limitations set forth in any or all of the provisions of this §56-3-303 and §§56-3-304 and 56-3-305 (but subject to §56-3-306) shall apply only at the time of the original acquisition of an investment or at the time a transaction is entered into and shall not be applicable to the insurer or such investment or transaction thereafter except as provided in subdivision (a)(23) of this section. In addition, any investment or transaction, once qualified under any subsection of this

section, shall remain qualified notwithstanding any refinancing, restructuring or modification of such investment or transaction, provided that the insurer shall not engage in any such refinancing, restructuring or modification of any investment or transaction for the purpose of circumventing the requirements or limitations of this part. The commissioner shall have full discretion to value investments and transactions that an insurer holds at the time of an examination of such insurer using a method of calculating such values that the commissioner selects in his discretion, *provided* that such method is consistent with any applicable provisions of this code and any applicable valuation method that the NAIC is currently using at such time with respect to investments and transactions; if there is a conflict between such a provision of this code and such an NAIC valuation method, such provision of this code shall control. Notwithstanding the foregoing provisions of this subdivision (a)(25), if the commissioner determines that the continued operation of an insurer may be hazardous to its policyholders, its creditors or the general public, then the commissioner may issue an order consistent with applicable statutes requiring such insurer to limit or withdraw from certain investments or transactions or discontinue certain practices as to investments or transactions to the extent the commissioner deems necessary.

(b)

(1) A domestic life insurance company at the time of original issue or at any other time, may acquire one (1) or more subsidiaries, subject to the limitations in subdivision (b)(2). Such subsidiaries may conduct any kind of lawful business and their authority to do so shall not be limited by reason of the fact that they are subsidiaries of a domestic insurer. For purposes of this section, “subsidiary” means a corporation in which the insurer owns and holds more than fifty percent (50%) of the voting stock of the corporation.

(2) The acquisition of subsidiaries by a domestic life insurer shall be subject to the following:

(A) Except as provided in subdivisions (b)(2)(B) and (C), the aggregate amount that may be invested in subsidiaries in the form of common stock, preferred stock or debt obligations shall not exceed the amount by which the capital and surplus of the insurer exceed the minimum capital and surplus required to form a new company to do the kind or kinds of insurance business the insurer is authorized to transact in this state. If the subsidiary to be acquired is one (1) or more insurance companies formed under the laws of a foreign country, the total amount of holding in such foreign companies shall not exceed three percent (3%) of the admitted assets of the domestic life insurance company and shall be included for purposes of the overall limitation on amounts of investments in subsidiaries;

(B) With the approval of the commissioner, a domestic life insurer may invest any amount in excess of the amount permitted in subdivision (b)(2)(A) in common stock, preferred stock or debt obligations of one (1) or more subsidiaries; provided, that after such investment, the insurer's surplus as regards policyholders shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs; and

(C) If the subsidiary acquired by a domestic life insurer is engaged exclusively in holding title to or holding title to and managing or developing real property, the amount of the insurer's investment therein shall not be included in calculating the

aggregate limit on investments in subsidiaries; provided, that the amount invested in such subsidiary is included with the aggregate of all the insurer's holdings for purposes of §56-3-305(b) and the real property owned by the subsidiary shall be subject to the provisions of §56-3-305(a)(5).

(3) Investments in common stock, preferred stock or debt obligations of subsidiaries made pursuant to this subsection (b) shall not be limited by or be subject to any of the otherwise applicable authorizations, restrictions or limitations applicable to the investments of domestic life insurers, except as provided in subdivision (b)(2)(C).

(4) Whether any investment pursuant to this subsection (b) meets the applicable requirements thereof shall be determined on a pro forma basis immediately after such investment is made, taking into account:

(A) The capital and surplus of the insurer and the minimum capital and surplus required at that time for a new company to do the same kind or kinds of insurance business the insurer is authorized to transact in this state;

(B) The then outstanding principal balance on all previous investments in debt obligations of subsidiaries; and

(C) The original cost or the current book value, whichever is lower, of all previous investments in the common or preferred stock of subsidiaries.

(5) If the insurer ceases to own more than fifty percent (50%) of the stock of a subsidiary, it shall dispose of any investment therein made pursuant to this section within three (3) years from the time of cessation of the requisite percentage of ownership, or within such further time as the commissioner may

prescribe, unless at any time after such investment has been made, such investment has become a permitted investment under any other provision of the law governing investments of domestic life insurance companies.

(c) Any investment held by an insurer on or transaction entered into by an insurer prior to the effective date of this act which was legally authorized at the time it was made, acquired or entered into or which the insurer was authorized to hold or engage in immediately prior to such effective date, but which does not conform to the requirements of this section or §56-3-304, may continue to be held by or engaged in and considered as an authorized investment or authorized transaction of the insurer; provided such investment or transaction is disposed of at its maturity date, if any, or within the time prescribed by the law under which it was acquired, if any; and provided further, in no event shall the provisions of this subdivision alter the legal or accounting status of such investment or transaction.

56-3-304.

(a) Domestic life insurance companies may, directly or indirectly through an investment subsidiary, invest in investments and enter into transactions in Canada which are substantially of the same kinds, classes and investment grades as those eligible for investment under §56-3-303(a); but the aggregate amount of such investments and transactions which are held at any time by any such company shall not exceed ten percent (10%) of its admitted assets, except where a greater amount is permitted pursuant to subsection (b), in which case the provisions of this subsection shall not be applicable.

(b) Any domestic life insurance company which is authorized to do business in a foreign country or which has outstanding insurance, annuity or reinsurance contracts on lives or risks resident or located in a foreign country may invest in investments and enter into transactions in such foreign country which are substantially of the same kinds,

classes and investment grades as those authorized under §56-3-303(a); but the aggregate amount of such investments and transactions in a foreign country and of cash in the currency of such country which is at any time held by such company shall not, except as provided in subsection (a), exceed one and one-half (1 ½) times the amount of its reserves and other obligations under such contracts or the amount which such company is required by law to invest in such country, whichever is greater.

(c) In addition to the foreign investments authorized under subsections (a) and (b), any domestic life insurance company may, directly or indirectly through an investment subsidiary, invest in investments and enter into transactions in foreign jurisdictions which are substantially of the same kinds, classes and investment grades as those authorized under §56-3-303(a); but the aggregate amount of such investments made and transactions entered into pursuant to this subsection shall not exceed the lesser of five percent (5%) of its admitted assets or the amount by which the capital and surplus of the company exceeds the minimum capital and surplus required for the kind or kinds of insurance the company is authorized to transact in this state.

(d) The commissioner may approve a plan for an insurer to make foreign investments and enter into foreign transactions not to exceed an additional fifteen percent (15%) of its admitted assets, if the commissioner determines that the plan contains adequate quality and diversification standards.

(e) Investments and transactions authorized under subsections (a)-(d) shall be subject to the limitations on investments in and transactions with any one (1) issuing business entity, or as to asset-backed securities, secured by or evidencing an interest in a single asset or pool of assets, set forth in §56-3-303(a)(3), (4), (16), (18) and (19) and to the limitations on the aggregate amount of any insurance company's investments and transactions under §56-3-303(a)(3), (4), (10), (14), (15), (16), (18), (20) and (23).

(f) No more than ten percent (10%) of the insurer's admitted assets may be in foreign investments and transactions made under paragraphs (c) and (d) of this section in the aggregate that are denominated in foreign currency that are not hedged pursuant to the provisions of §56-3-303(a)(20).

SECTION 3. Tennessee Code Annotated, Section 56-3-305, is amended by deleting from subdivision (a)(1) the citation "(6)" and substituting therefor the citation "(b)".

SECTION 4. This act shall take effect upon becoming law, the public welfare requiring it.